

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

TERRY LEA BUNCH,

Plaintiff-Appellant,

v.

FRANKLIN FREEMAN; LYNN PHILLIPS;
VERA BENNETT; RUBY BAKER; GREG
BAKER; PHYLLIS ALFORD; HAZEL

No. 96-7089

KEITH; GEORGE ERWIN; EDDIE PRUITT;
PAT SUMMEY; JOE LOFTIS; PATRICIA
FUQUA; LEONA OWENS; JAMES PIERCE,
III; MARCUS JIMISON, in their
individual and official capacities,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
Malcolm J. Howard, District Judge.
(CA-95-978-5-H)

Submitted: December 17, 1996

Decided: December 27, 1996

Before ERVIN and MOTZ, Circuit Judges, and PHILLIPS,
Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Terry Lea Bunch, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Terry Bunch appeals the district court's order denying relief on his 42 U.S.C. § 1983 (1994) complaint. Bunch's appeal was not filed within thirty days of the district court's judgment order dismissing his complaint, but was filed within thirty days of the court's order denying Bunch's motion to alter the court's judgment. Moreover, although Bunch described his motion as a Rule 59(e) motion it is properly construed as a motion filed under Fed. R. Civ. P. 60(b), because it was not filed within ten days of the court's original judgment. See In re Burnley, 988 F.2d 1, 3 (4th Cir. 1992). Bunch's appeal is therefore timely only as to the order denying his motion, see Fed. R. App. 4, and our jurisdiction is limited to review of the district court's order denying Bunch's motion. Burnley, 988 F.2d at 3.

Bunch's motion alleged that the district court's original order failed to address his claims with respect to a particular Defendant. In denying the motion, the district court explained that its decision held that Bunch suffered no violation of his constitutional rights, which effectively precluded liability on the part of every Defendant in this action. Moreover, the court concluded that Bunch's claims as to the remaining Defendant were speculative.

We have reviewed the record and find that the district court did not abuse its discretion in denying Bunch's motion. See NOW v. Operation Rescue, 47 F.3d 667, 669 (4th Cir. 1995). Bunch's motion raised no new legal issues and the arguments asserted in his motion were both conclusory and speculative. Accordingly, although we grant leave to proceed in forma pauperis, we deny Bunch's motion for appointment of counsel and affirm the order of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED